

To: Judith.Harvey@usdoj.gov[Judith.Harvey@usdoj.gov]
From: Christopher J. Neary
Sent: Wed 6/25/2014 1:15:16 PM
Subject: FW: California River Watch v. City of Willits

I just reread this email and note that there was a big error in it. Our expert testified that the unaccounted wastewater at the plant which is likely leaching to the groundwater was 100 million gallons per year, not day. He acknowledged that some of the loss could be attributable to evaporation.

From: Harvey, Judy (ENRD) [mailto:Judith.Harvey@usdoj.gov]
Sent: Tuesday, June 24, 2014 2:50 PM
To: Christopher J. Neary
Cc: Lu, Sarah (ENRD)
Subject: RE: California River Watch v. City of Willits

Mr. Neary,

Thank you for bringing this matter to our attention. The Clean Water Act's statutory and regulatory requirements pertaining to citizen suits require that a copy of a proposed consent judgment be sent to the United States for review 45-days before it is entered. See 33 U.S.C. 1365(c)(3) & 40 C.F.R. 135.5. In this case, the parties failed to send us a copy before stipulating to a dismissal of the suit, although now they are now proposing to stay the obligations of the settlement until we have had an opportunity to review it. We will request a copy of the decree from the parties for review and will file a letter with the Court and, if appropriate, request that the parties take steps to reinstate the case (as a dismissal has already been entered by the Court).

With respect to your question about the preclusive effect of citizen suits, the United States is not bound by citizen suit settlements. See, e.g., Hathorn v. Lovorn, 457 U.S. 255, 268 n.23 (1982); Sierra Club v. Electronic Controls Design, 909 F.2d 1350, 1356 n.8 (9th Cir. 1990) (explaining that the United States is not bound by "citizen suit settlements and may bring its own enforcement action at any time").

Again, thank you for your email and please let me know if you have any further questions.

Best,

Judy

From: Christopher J. Neary [<mailto:cjneary@pacific.net>]
Sent: Monday, June 23, 2014 1:59 PM
To: Harvey, Judy (ENRD)
Subject: California River Watch v. City of Willits

Dear Ms. Harvey:

Attached is a letter to the District Judge in the above matter. We attempted to intervene in the case and Judge Chen denied the petition without prejudice, but noted that he expected that we would be offered an opportunity to comment on the consent decree.

The parties attempted to cut us out of comment by entering into a private settlement agreement and seeking dismissal of the case. As can be seen the settlement resembles a consent decree in that it imposes duties upon the City of Willits to be monitored by the Citizen's Plaintiff.

Although our issues with the City of Willits relate to our contract which is subject to pending litigation in state court, it is noteworthy that the complaint alleged that the City constructed ponds which are discharging partially treated wastewater to the groundwater without a permit in amounts which might be as high as 100 million gallons per day. Our expert witness testified in early April of this year in the state case that approximately 100 million gallons per day are being discharged to groundwater. Although that is relevant to the state case it is more relevant to the federal case. The City denies such, but has not provided any data other than pump records which has been shown to have a 81,000,000 gallon reporting error.

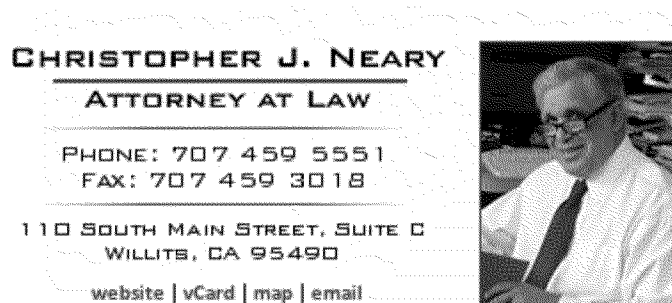
In that I have just received this settlement I have not had an opportunity to research the preclusive effect of the settlement agreement, if any, upon third parties, or the EPA and its designee in enforcing the clean water act. The remedial measure---testing surface water some distance away in accord with recommendations yet to be developed---does not address

groundwater contamination. If this settlement is at least arguably likely to have preclusive effect upon the government, or other citizen enforcers of the CWA, then it is something that you should at least take a look at the matter.

If there is no preclusive effect –under state law as provided in the settlement agreement- and you are confident of that, then it is something that you can ignore. I just don't know the answer to the question as to whether a private consent decree would be deemed to be used as a shield.

Kind regards,

C. J. Neary



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